

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION  
INQUIRY CONCERNING A JUDGE No. 04-239

CASE NO. SC05-851

JUDGE RICHARD H. ALBRITTON, JR.

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**MOTION FOR REMAND OR TO REOPEN 6(b) PROCEEDINGS**

COMES NOW, Judge Richard H. Albritton, Jr., by and through his undersigned counsel, and files this, his Motion for Remand or to Reopen 6(b) Proceedings based on the recent discovery of potential misconduct during the investigation preceding the probable cause finding. Specifically, counsel has recently discovered that the Judicial Qualifications Commission (hereinafter the “JQC”) has assisted two individuals in their pursuit of their private agendas against Judge Albritton, in contravention of Florida Bar v. Murrell, 74 So. 2d 221 (Fla. 1954), by threatening at least one reluctant witness with a Bar complaint if she failed to make a statement and by failing to conduct a thorough investigation. See also Florida Bar v. Swickle, 589 So. 2d 901 (Fla. 1991) (Bar should conduct investigations and not allow those with interests adverse to attorney a prominent role in directing disciplinary proceedings); and Tyson v. Florida Bar, 826 So. 2d 265 (Fla. 2002) (disciplinary proceedings are not to be used to vindicate private

rights). The recently discovered facts set forth in this Motion cause grave concern for the seriousness and, indeed, legitimacy of these proceedings.<sup>1</sup>

## **I. FACTS**

A. On February 7, 2006, the Judge deposed Attorney Kara Berlin, who was listed as a witness by the JQC. Ms. Berlin's testimony established that not only was Ms. Berlin instructed to initially gather derogatory information about Judge Albritton by a person whom she believed to be her employer, she was ultimately threatened with a Florida Bar grievance by the JQC investigator if she refused to provide a statement

B. In pertinent part, Ms. Berlin testified to the following information. Ms. Berlin stated that she was a staff attorney serving the judges of the Fourteenth Judicial Circuit from January 2003 until September 2005. Ms. Berlin spent eighty (80) percent of her time working for Judge Albritton while assigned to the Jackson County Courthouse in Marianna, Florida.

C. Sometime in 2003, the Court Administrator, Jennifer Wells, approached Ms. Berlin and asked her to call the Chairman of the JQC, the

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<sup>1</sup> Counsel for Judge Albritton recently concluded depositions of two attorneys who practiced in the Fourteenth Judicial Circuit during the period described in the JQC's allegations. Deposition transcripts are not yet available, due to the expense of expedited copies. Therefore, references herein, to testimony and statements attributed to the deponents, are based on contemporaneous notes and undersigned counsel's best recollection of deposition testimony and statements made during conversations between undersigned counsel and the deponents.

Honorable James R. Wolf, and complain about Judge Albritton. Ms. Wells was aware that Ms. Berlin had previously served as an intern for Judge Wolf.

D. Ms. Berlin believed that Ms Wells was her employer. In fact, she explained that Ms. Wells signed her timecards and “made it absolutely clear that she was my boss.”

E. Ms. Berlin does not recall anything specific Ms. Wells wanted reported to Judge Wolf. Ms. Berlin testified that initially she did not think Ms. Wells was serious. However, Ms. Wells persisted with the same request of Ms. Berlin to complain to Judge Wolf about Judge Albritton on two additional occasions prior to February 2004.

F. Ms. Berlin declined to call Judge Wolf and complain. Ms. Berlin testified that she was never of the opinion that Judge Albritton did anything that required a complaint to the JQC.

G. However, Ms. Wells did not relent. After Ms. Berlin was transferred to the Bay County Courthouse in Panama City, Florida, in February 2004, she received a telephone call at work from Jennifer Wells one morning. Ms. Wells advised Ms. Berlin that she needed to speak with her off the courthouse property. The two women drove to a local coffee shop that morning and had a conversation of approximately forty (40) minutes.

H. During this coffee-shop meeting, Ms. Wells told Ms. Berlin that she had a disagreement with Judge Albritton. (This appears to be Charge One of the Amended Formal Charges). Jennifer Wells then advised Ms. Berlin that she had made a decision to “go after Judge Albritton.” Ms. Wells related that she was getting a lot of people to help her, without specifying how many people, and asked Ms. Berlin to help her. As Ms. Berlin believed that Ms. Wells was her boss, she testified that she felt she had no choice but to help Jennifer Wells.

I. Ms. Wells thereupon told Ms. Berlin to recall specific instances involving Judge Albritton that Ms. Berlin had experienced or of which she had ever heard. She was told by Ms. Wells to contact two other courthouse employees who Ms. Wells hoped would offer information detrimental to Judge Albritton. Ms. Berlin contacted those employees who either did not respond or declined to participate.

J. After the coffee-shop meeting, Jennifer Wells called Ms. Berlin three (3) to six (6) times to remind her to write a list and keep track of Judge Albritton’s conduct. In one such call, Ms. Wells advised Ms. Berlin that she had read a JQC case where a series of small incidents combined to result in discipline.<sup>2</sup> So, Ms. Wells urged Ms. Berlin to try to remember anything, no matter how small. Ms.

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<sup>2</sup> Jennifer Wells confirmed this fact in her Memorandum to Chief Judge Judy M. Pittman dated June 28, 2004, in which she cited In Re: Kelly, 238 So. 2d 565, 569 (Fla. 1970).

Wells likened the situation to a “crock pot or stew pot” and everything had to be thrown in to make it better. On at least one occasion, Ms. Wells called Ms. Berlin acting “like a giddy schoolgirl,” excited about how her conspiracy against Judge Albritton was developing.

K. Thereafter, a representative of the JQC contacted Ms. Berlin to arrange an appointment to discuss Judge Albritton. The investigator advised Ms. Berlin he had gotten her name from Jennifer Wells. Ms. Berlin agreed to meet with the investigator at a later time. However, Ms. Berlin did not want to participate and discussed the matter with another judge who advised her it was strictly her decision. This judge further advised her it was alright if she wanted to be involved and her prerogative if she chose not to be.

L. Upon meeting with the JQC investigator, Ms. Berlin told him she did not want to participate in his investigation. At that time, the JQC investigator threatened her with a Florida Bar grievance instructing her that she had no choice, that she had an obligation to speak with him, and that if she refused, she could be subjected to a Bar complaint. This threat was false as Ms. Berlin was not under subpoena. However, being a young lawyer and not wanting trouble, Ms. Berlin succumbed to the threat. The resulting conversation was neither recorded, nor was Ms. Berlin put under oath. Ms. Berlin believes the investigator took some notes. It is apparent from the questions asked by Special Counsel of the JQC during Ms.

Berlin's deposition that Ms. Berlin does not agree with or remember many of the statements attributed to her by the threatening investigator. Of course, since the JQC has refused to provide Ms. Berlin's witness summary to Judge Albritton, the extent of the disagreement cannot be determined.

M. On February 3, 2006, Attorney Zachary White was deposed by counsel for Judge Albritton and Special Counsel for the JQC. Mr. White was previously employed as an attorney for the Department of Children and Families (hereinafter "DCF") in the Fourteenth Judicial Circuit from October 2003 to February 2004. Mr. White's supervisor was Tara Melton, Esquire, another DCF attorney who is the other chief antagonist of Judge Albritton. Mr. White has never been contacted by the JQC to attempt to corroborate Ms. Melton's accusations even though Mr. White worked side-by-side with Ms. Melton. Mr. White contradicted much of the substance of Ms. Melton's claims during his deposition.

N. Mr. White was often in court with Tara Melton appearing before Judge Albritton. When Mr. White was asked if he had observed Judge Albritton treat Ms. Melton in a demeaning fashion, Mr. White testified, "not once." Mr. White also testified that Judge Albritton generally called all attorneys, including Tara Melton, by Mr. or Ms. in court, and often addressed attorneys by their first names off the record or outside of court.

O. It was Mr. White's observation that Ms. Melton took many cases to trial for which there was little evidentiary support and thus, little chance of success. Mr. White openly disagreed with Ms. Melton about expending significant hours on marginal cases. This disagreement became a source of tension between them. Ultimately, Mr. White resigned due to Ms. Melton's management style and "nitpicking."

P. However, before their relationship soured, Ms. Melton shared information with Mr. White significant to her claims against Judge Albritton. When Mr. White first started working with DCF, Ms. Melton warned him that he would have to appeal Judge Albritton and she complained of his rulings. Yet, Mr. White felt Judge Albritton was always fair, professional and courteous during Mr. White's stint with DCF. Mr. White, who is African-American, observed no gender- or race-related preferential or discriminatory treatment towards anyone by Judge Albritton. Mr. White did observe Ms. Melton experience significant trial problems due to a lack of knowledge of the rules of evidence.

Q. Furthermore, Ms. Melton advised Mr. White that she filed a racial discrimination claim against the Department of Children and Families when she felt she would not receive the supervisor's job she coveted.

## II. ARGUMENT

As arms of the Florida Supreme Court, both the JQC and the Bar are required to follow all applicable rules. See Florida Bar v. McCain, 361 So. 2d 700, 705 (Fla. 1978) (“After all, The Florida Bar acts for and is an agency of this Court. When the child falters the parent shall correct.”). In Florida Bar v. Rubin, 362 So. 2d 12, 16 (Fla. 1978), the Court stated as follows:

The Bar has consistently demanded that attorneys turn “square corners” in the conduct of their affairs. An accused attorney has a right to demand no less of the Bar when it musters its resources to prosecute for attorney misconduct. We have previously indicated that we too will demand responsible prosecution of errant attorneys, and that we will hold the Bar accountable for any failure to do so.

When The Florida Bar commits misconduct in a disciplinary proceeding, a respondent attorney is entitled to relief, up to and including the dismissal of charges. See Florida Bar v. Greenspan, 708 So. 2d 926, 928 (Fla. 1998) (citing Florida Bar v. Rubin, 362 So. 2d 12 (Fla. 1978)). Likewise, a judge is entitled to relief when the JQC fails to follow the law, thereby casting a dark cloud of doubt over the legitimacy of the entire judicial prosecution. The facts presented herein clearly demonstrate that the JQC has assisted two individuals in their pursuit of their private agendas against Judge Albritton in contravention of law, by threatening at least one reluctant witness with a Bar complaint if she failed to make a statement and by failing to conduct a thorough independent investigation.

### **A. Private Agendas**

The private agenda of Court Administrator Jennifer Wells in pursuing a complaint against Judge Albritton is clear and supported by uncontroverted evidence. Ms. Berlin testified unequivocally that Ms. Wells relayed her intention to “go after Judge Albritton” and to solicit Ms. Berlin and others to help her pursue her cause. Ms. Wells pursued her campaign by repeatedly calling and reminding Ms. Berlin to keep track of Judge Albritton’s conduct and to make note of any derogatory incident, no matter how trivial. Further, Ms. Wells made multiple requests of Ms. Berlin to call the Chairman of the JQC, the Honorable James R. Wolf, and complain about Judge Albritton directly. Ms. Wells even told Ms. Berlin to recruit other courthouse employees whom she hoped would supply information detrimental to Judge Albritton; in effect, to ‘stir the pot.’

Likewise, the recent testimony of Attorney Zachary White illustrates reasons why DCF Attorney Tara Melton, the other chief antagonist behind this JQC complaint, was personally motivated to make negative comments about Judge Albritton. When Mr. White first began working at DCF, Ms. Melton complained to him about Judge Albritton’s rulings and warned that he would have to appeal Judge Albritton’s decisions. To the contrary, Mr. White always found Judge Albritton to be fair, professional and courteous. On the other hand, Mr. White, who was often in court with Ms. Melton, observed that she took many marginal

cases to trial and that she experienced significant problems in her trials because of her lack of knowledge of the rules of evidence. Ms. Melton's negative remarks about Judge Albritton, which were contrary to Mr. White's personal observations, appear calculated to place blame on the judge for the failings of the attorney.

The Florida Supreme Court long ago condemned the practice of allowing those with interests adverse to an attorney to play a prominent part in directing the course of disciplinary proceedings. Murrell, at 226; See also, Swickle, at 904. In 2002, the Court reiterated its longstanding position that the purpose of disciplinary proceedings is the protection of the public, "not the vindication of private rights." Tyson, at 268, quoting In re Harper, 84 So. 2d 700, 702 (Fla. 1956). More recently, the Court upheld a Referee's recommendation dismissing, with prejudice, a formal complaint against an attorney based on misconduct by the Bar. Florida Bar v. Gary, S. Ct. Case No. SC03-632. In that case, the Referee specifically commented that the complaining witnesses had become extensively involved in the disciplinary proceeding, to the point of becoming the active litigant, and that they had used the disciplinary process as a means of vindication. Id., (See Report of Referee, attached as Exhibit A, page 13).

Likewise, the JQC in this case has allowed Ms. Wells and Ms. Melton to play prominent roles in developing the allegations. As explained below, the JQC has assisted these individuals in pursuing their private vendettas against Judge

Albritton. Specifically, the JQC both threatened at least one reluctant witness with a Bar complaint if they did not make a statement and ignored its obligation to conduct a thorough independent investigation.

## **B. Threatening a Witness**

Ms. Berlin succumbed to some of Ms. Wells requests, believing Ms. Wells was her boss and that she had no choice but to follow her employer's directives. Ms. Berlin declined, however, to complain to the JQC because she did not think that Judge Albritton had ever done anything to warrant a JQC complaint. Further, during a meeting with a JQC investigator scheduled at his request, Ms. Berlin told him that she did not want to participate in his investigation.

In response, the JQC investigator told Ms. Berlin that she had no choice in the matter and would be subjected to a Bar grievance if she refused to speak with him. Although this threat was false, as Ms. Berlin was not under subpoena, she succumbed to this pressure tactic because she was a young lawyer who wanted to stay out of trouble. Thereafter, the JQC investigator questioned Ms. Berlin, who was not under oath, in an unrecorded conversation.

Ms. Berlin believes that the investigator took notes. Based on her responses to questions posed by Special Counsel to the JQC during her recent deposition, however, it was apparent that Ms. Berlin did not agree with or recall many of the statements attributed to her by the threatening investigator. Because the JQC has

refused to provide Ms. Berlin's witness summary to Judge Albritton, he is unable to test the accuracy and context of any statements the investigator attributed to her therein.

Counsel for Judge Albritton has concluded only two (2) of the many relevant depositions expected in this case. On information and belief, Judge Albritton anticipates that further discovery will reveal other witnesses who were similarly pressured by Ms. Wells or a JQC investigator to provide negative comments about Judge Albritton. Again, because the JQC refuses to produce the witness summaries that its investigator prepared, which appear to have been relevant to the probable cause determination, the accuracy of the statements reported by him cannot be challenged.

If any attorney associated with the JQC ordered, ratified or with prior knowledge approved the JQC investigator's improper threat, such conduct would constitute a violation of Rule Regulating The Florida Bar 4-3.4(h), Rules of Professional Conduct. Rule 4-3.4(h) provides that "a lawyer shall not . . . threaten to present disciplinary charges under these rules solely to obtain an advantage in a civil matter." In any event, the investigator, while serving in his capacity as a representative of the JQC, acted improperly and in furtherance of Ms. Wells' personal goals when he falsely threatened Ms. Berlin with a Bar complaint if she

declined to give him information. Such conduct warrants a remand to the Investigative Panel.

### **C. Failing to Conduct a Thorough Investigation**

Although Mr. White was previously employed as a DCF Attorney who worked closely with and under the direct supervision of Ms. Melton, the JQC never bothered to contact him for corroboration of Ms. Melton's accusations. Had the JQC thoroughly and independently investigated this case, it would have learned that Mr. White's observations were in sharp contrast to those reported by Ms. Melton.

Mr. White routinely appeared in court with Ms. Melton and observed first-hand Judge Albritton's interaction with her. Although Mr. White saw Ms. Melton falter in trials because of the marginal nature of the cases she chose to pursue and because of her lack of knowledge of the rules of evidence, he testified that he never once saw Judge Albritton demean Ms. Melton in any way. In addition, Mr. White, who is African-American, never observed Judge Albritton engage in any gender- or race-based preferential or discriminatory treatment toward Ms. Melton or anyone else.

Because the JQC conducted a one-sided investigation, the information upon which the Investigative Panel relied in finding probable cause is necessarily incomplete and imbalanced. In addition, the investigative summaries of interviews

that were selectively conducted, and which were relied upon by the Investigative Panel, have never been produced to Judge Albritton. Therefore, Judge Albritton has been precluded from testing the accuracy, sufficiency and reliability of the information reported therein. By failing its duty to conduct a thorough and independent investigation, the JQC has assisted both Ms. Wells and Ms. Melton in pursuing their private agendas and has enabled them to concoct a complaint against Judge Albritton to serve their personal goals. The JQC has also caused questionable and meritless allegations to become public, thereby damaging the Judge's reputation. Such objectives do not fall within the proper parameters of a JQC proceeding, are contrary to Florida law and must not be condoned.

### **III. CONCLUSION**

Given the facts and argument presented herein, the ideals and goals of due process, fundamental fairness, the JQC's own rules and procedures and Florida law all mandate that the instant case be remanded to the Investigative Panel for further investigation.

WHEREFORE, and by reason of the foregoing, Judge Albritton respectfully requests the Hearing Panel remand this matter to the Investigative Panel for further investigation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of February, 2006, the original of the foregoing Motion for Remand or to Reopen 6(b) Proceedings has been filed via [e-file@flcourts.org](mailto:e-file@flcourts.org) and furnished by FedEx overnight delivery to:

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